

REMARKS

Status of the Claims

Claims 1, 12, 14, 15, 17, 18, 20, 21, 23 and 24 are pending. Claims 1, 3-7, 12, 14, 15, 17, 18, 20, 21, 23 and 24 stand rejected. Claim 1 has been amended. Claims 3-7 have been cancelled. All amendments and cancellations of claims are made without prejudice or disclaimer. No new matter has been added by way of the present amendments. Specifically, the amendment to claim 1 is supported by the specification at, for instance, page 5, lines 18-20, page 6, lines 1-5 and lines 11-15, Example 1, page 12, lines 2-7, previous claims 5 and 7, and original claim 11. Reconsideration is respectfully requested.

Suspension of Action and Request for Continued Examination

The Examiner is respectfully notified that filed herewith are both a Request for Continued Examination (RCE) under 37 C.F.R. § 1.114, and a request for Suspension of Action under 37 C.F.R. § 1.103(c). The Examiner is respectfully requested not to examine the present application or response until expiration of the three month suspension.

Interview

Applicants and Applicants' representatives thank the Examiner for extending the courtesy of an interview on July 18, 2008. Briefly, during the interview, all issues barring allowance of the present claims were discussed. Applicants presented a video movie which depicted the vortexing of plant calli and that after such vortexing, the calli clearly fell to the bottom of the eppendorf tube in which they were vortexed. A second video movie was shown in which

immature embryos from maize underwent the same procedure, yielding the same observations. Further, a set of proposed claim amendments was reviewed by the Examiner and discussed. The proposed claim amendments are submitted herewith. Reconsideration and allowance thereof are respectfully requested.

Rejections Under 35 U.S.C. §§ 102(b) and/or 103(a)

Claims 1, 3-7, 12, 14, 15, 17, 18, 20, 21, 23 and 24 remain rejected under 35 U.S.C. § 102(b) as anticipated by, or in the alternative, under 35 U.S.C. § 103(a) as obvious over Hansen, WO 98/54961. (*See*, Office Action of January 25, 2008, at pages 2-6, hereinafter, "Office Action"). Claims 3-7 have been cancelled herein, thereby obviating the rejection of claims 3-7. Applicants traverse the rejection as to the remaining claims.

The Examiner states that the prior submitted arguments were not persuasive for the following reasons: (1) The claims encompass any plant cell and any plant tissue, not just type I callus or immature embryos. (2) The Declaration is not persuasive because the claims are not limited to the types of materials and method steps utilized in the methods disclosed in the Declaration which yielded unexpected results. (3) Applicants cannot differentiate their invention over that of Hansen et al. based solely on centrifugation speed because such parameters are optimizable by one of ordinary skill in the art.

Although Applicants do not agree that claim 1 is anticipated by the disclosure of Hansen et al., to expedite prosecution, claim 1 has been amended herein to be directed to plant embryos, plant calli or cultured plant cells and to further recite, in part, "wherein heating is performed at a

temperature of 37 °C to 52 °C for 1 minute to 24 hours.” Furthermore, claim 1 has been amended to indicate that the centrifugation is to be carried out from 1 second to 4 hours.

Applicants point out that Hansen et al. do not disclose or suggest these limitations anywhere in their specification. Thus, Hansen et al. cannot anticipate the presently claimed invention, at least as amended, because Hansen et al. fail to disclose all of the limitations of the presently claimed invention. Anticipation requires that “each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” (*See, In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949 (Fed. Cir. 1990), quoting *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987)).

Furthermore, Applicants note that one of ordinary skill in the art would not have considered performing such operations on these types of tissues. Neither would one of ordinary skill in the art expect that such manipulations could possibly effect the efficiency of gene transfer.

Therefore, in light of the claim amendments submitted herewith, reconsideration and withdrawal of the anticipation rejection and/or obviousness rejection of claims 1, 12, 14, 15, 17, 18, 20, 21, 23 and 24 are respectfully requested.

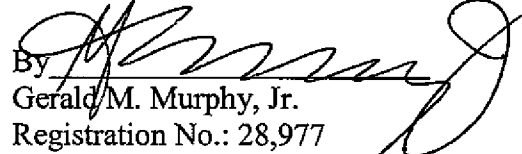
CONCLUSION

If the Examiner has any questions or comments, please contact Thomas J. Siepmann, Ph.D., Registration No 57,374, at the offices of Birch, Stewart, Kolasch & Birch, LLP.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

Dated: July 24, 2008

Respectfully submitted,

By 
Gerald M. Murphy, Jr.
Registration No.: 28,977
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road
Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicants